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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ADNAN AJAJ,

Defendant and Appellant.

B215090

(Los Angeles County
Super. Ct. No. BA287239)

APPEAL from an order of the Superior Court of Los Angeles County,
Gary J. Ferrari, Judge. Affirmed.

Darryl O. Dickey, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D.
Martyneec and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and
Respondent.

In September 2005 Adnan Ajaj pleaded no contest to one count of carjacking pursuant to a negotiated agreement. Imposition of sentence was suspended, and Ajaj was placed on three years formal probation. Following his arrest in June 2008 for unlawfully driving or taking a vehicle, Ajaj's probation was revoked; and he was sentenced to five years in state prison on the 2005 carjacking charge. Ajaj appeals from the order revoking probation, primarily contending the trial court impermissibly combined the probation revocation hearing with the preliminary hearing on the new criminal charge. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Concurrent Probation Revocation and Preliminary Hearings

On July 24, 2008 the trial court held the probation revocation hearing in Ajaj's carjacking case concurrently with the preliminary hearing in the new criminal case for unlawfully driving or taking a vehicle. At the outset of the concurrent hearings defense counsel objected: "I'm going to actually object to having the probation violation go forward because I assume it's based on the current case, and I also know they only have one witness, which is the police witness. They're going to put on all of their evidence under Prop. 115. None of that is going to be admissible at the violation hearing." Asked by the court to respond to the objection, the prosecutor stated two witnesses would be called to testify, one of whom would identify Ajaj as the driver of the stolen vehicle. Defense counsel made no further objections, and the court proceeded with the concurrent hearings.

Long Beach Police Officer Steven Vanden Bosch testified that on June 24, 2008 he was assisting a traffic control officer who was following a Nissan Altima reportedly stolen on June 19, 2008. The registered owner of the automobile was Thrifty Rent-A-Car. Bosch saw Ajaj driving the Altima. Ajaj was stopped and taken into custody.

Long Beach Police Officer Abram Yap testified he questioned Ajaj following the arrest.¹ Ajaj told Yap he had rented the Altima in April 2008 on a week-to-week contract

¹ Prior to questioning Ajaj, Officer Yap advised him of his right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel. (*Miranda v. Arizona*

and had extended the original contract three times for a total of four weeks. In the first week of June 2008 Thrifty Rent-A-Car asked Ajaj to return the car. Although Ajaj agreed to do so, he did not return the car. Ajaj told Yap he intended to return the car once he found a cheaper rental car to replace it.

Ajaj neither testified nor presented other evidence in his defense at the hearings.

Following the presentation of evidence, defense counsel moved to dismiss the alleged probation violation on the ground of insufficient evidence. Counsel asserted Ajaj's statements to Officer Yap failed to prove the car had been stolen and argued, without the direct testimony of a representative of Thrifty Rent-A-Car, the prosecution had not established the car's ownership. The trial court denied the motion to dismiss, finding there was sufficient proof Ajaj had violated his probation by "retaining a car that didn't belong to him." The court also held Ajaj to answer in the new case.²

2. Proceedings Following the Concurrent Hearings

On October 14, 2008 the trial court heard Ajaj's motion to set aside the revocation of his probation. Defense counsel argued the Los Angeles Superior Court in Long Beach holds revocation hearings in advance of trial on new criminal charges as a matter of course and asserted this practice was prejudicial and had been condemned by the California Supreme Court. The court denied the motion and sentenced Ajaj to five years in state prison.

(1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].) Ajaj acknowledged he understood his rights and agreed to answer questions.

² Ajaj was tried by a jury and acquitted of the charge of unlawful driving or taking a vehicle in November 2008.

CONTENTIONS

Ajaj contends holding his probation revocation hearing concurrently with his preliminary hearing on a new criminal charge was unlawful, the trial court failed to apply the proper standard of proof to determine whether he had violated the conditions of his probation and the introduction of hearsay evidence at the revocation hearing violated his Sixth Amendment right to confront witnesses under *Crawford v. Washington* (2004) 541 U.S. 36 [124 S.Ct. 1354, 158 L.Ed.2d 1771].

DISCUSSION

1. *The Trial Court Properly Revoked Ajaj's Probation at a Hearing Held Concurrently with the Preliminary Hearing on New Criminal Charges*

Ajaj had a due process right to defend against the petition to revoke his probationary status (*Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782 [93 S.Ct. 1756, 36 L.Ed.2d 656]; *In re Wagner* (2005) 27 Cal.App.4th 138, 146), including the right to present mitigating factors weighing against the revocation (*People v. Coleman* (1975) 13 Cal.3d 867, 873 (*Coleman*)). The California Supreme Court has recognized the exercise of that right may be more difficult when the revocation hearing is held prior to trial on new criminal charges on which the petition to revoke probation is based because, by testifying or arguing mitigating factors at the revocation hearing, the probationer may undermine his or her ability to defend against those charges at trial. (*Coleman*, at pp. 873-876.) Rather than bar revocation hearings in advance of trial, however, the Court held that, upon timely objection from the probationer, the probationer's testimony will be inadmissible at a subsequent criminal trial except as impeachment or rebuttal in the face of probable perjured testimony. (*Id.* at p. 889.) This rule "guarantees the probationer the ability to present a full case at the hearing without running the risk of prejudicing his defense at a subsequent trial." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 351.)

In *People v. Jasper* (1983) 33 Cal.3d 951 the Supreme Court reaffirmed *Coleman*, holding a defendant's constitutional right against self-incrimination was adequately protected by the exclusionary rule created in *Coleman*, which precludes the prosecutor from using a probationer's revocation-hearing testimony or the fruits of that testimony at

the trial on the new charge. (*Jasper*, at pp. 933-934.) In addition, the Court held, although conducting the trial on the new charge before the revocation hearing might be preferable, “[w]hether a revocation hearing should be held before trial rests in the reasonable discretion of the trial court.” (*Id.* at p. 935; see also *People v. Weaver* (1985) 39 Cal.3d 654, 659 [“[g]iven the Legislature’s broad grant of authority to the trial courts to revoke probation ‘at any time’ following the commission of a new criminal offense [citation], it would be improper for us to adopt a ‘supervisory’ rule which mandates staying such revocation proceedings as a matter of course until trial of the pending criminal charges has occurred”]; *People v. Arreola* (1994) 7 Cal.4th 1144, 1159 [“[a]s a means of avoiding needless duplication and promoting judicial economy, in some instances the preliminary hearing on the charges that give rise to the probation revocation proceeding may be coordinated with the final revocation hearing, in a single proceeding”].) Finally, in response to the defendant’s assertion the San Francisco Superior Court routinely scheduled all revocation hearings in advance of trial on new criminal charges, the Court held, even if this were true, “we decline to reverse defendant’s conviction solely on that basis, for as *Coleman* makes clear, by reason of its limited exclusionary rule, a probationer’s rights are not impaired by reason of the timing of his revocation hearing.” (*Arreola*, at p. 1159.)

Although apparently recognizing the significance of *Coleman*, *supra*, 13 Cal.3d 867 and *People v. Jasper*, *supra*, 33 Cal.3d 931, Ajaj nonetheless argues holding concurrent probation revocation and preliminary hearings in this case was impermissible because the trial court failed to exercise its discretion to decide whether or not to defer the revocation hearing until after the trial on the open criminal case. Ajaj’s contention is belied by the record.

Defense counsel objected to going forward with the revocation hearing on the ground she anticipated a police witness would testify and present hearsay evidence—evidence that is admissible at a preliminary hearing under Penal Code section 872,

subdivision (b),³ but would not be admissible at the revocation hearing. The court considered defense counsel's objection and inquired of the prosecutor before electing to proceed. Nothing more is required. "[F]ailure to state reasons for a discretionary decision does not constitute, by itself, abuse of discretion." [Citation.] The statute [governing probation revocation hearings] does not require the court to state the basis for its actions orally or in writing." (*People v. Preyer* (1985) 164 Cal.App.3d 568, 574.)

Ajaj further maintains the criminal courts in Long Beach routinely conduct concurrent probation revocation and preliminary hearings, which he argues is at odds with the Supreme Court's admonition that "the most desirable method of handling the problems of concurrent criminal and probation revocation proceedings may well be for revocation proceedings not even to be initiated until after disposition of the related criminal proceedings." (*People v. Jasper, supra*, 33 Cal.3d at p. 935.) Again, nothing in the record supports Ajaj's claim. There was no indication by the trial court in this case that the concurrent hearings were being conducted as a matter of local rule or unwritten practice without consideration of the individual probationer's interests. Nor do we presume, absence a contrary showing, that other trial courts in Long Beach conducting concurrent hearings do so without an appropriate exercise of discretion. Abuse of discretion is not demonstrated "merely by characterizing the exercise of discretion as routine." (*People v. Preyer, supra*, 164 Cal.App.3d at p. 574.)

³ Penal Code section 872, subdivision (b), establishes a "limited exception to the general hearsay exclusionary rule of Evidence Code section 1200, by allowing a probable cause finding to be based on certain hearsay testimony by law enforcement officers having specified experience or training." (*Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1082.) This exception permits "a qualified investigating officer to testify concerning otherwise inadmissible hearsay statements made to him by persons he has interviewed" (*People v. Sally* (1993) 12 Cal.App.4th 1621, 1626.)

2. *The Trial Court Applied the Proper Standard of Proof*

Vacillating between an argument that the trial court improperly utilized the lower reasonable cause standard applicable at a preliminary hearing to hold a defendant to answer, rather than the preponderance of the evidence standard appropriate for a probation revocation hearing, and a challenge to the sufficiency of the evidence, Ajaj contends the record fails to support the court's finding he violated a condition of his probation. Neither contention has merit.

"The standard of proof required for revocation of probation is a preponderance of evidence to support the violation. (*People v. O'Connell* (2003) 107 Cal.App.4th 1062, 1066.) Trial courts are granted great discretion in deciding whether or not to revoke probation. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 445.) 'Absent abuse of that discretion, an appellate court will not disturb the trial court's findings.' [Citation.]" (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) Nothing in the record indicates the trial court did not know or failed to apply the proper standard of proof. The trial court heard admissible evidence that Ajaj was driving a car that did not belong to him and that Ajaj admitted he had not returned it after being asked to do so by the rental car company. This testimony was plainly sufficient to establish by a preponderance of the evidence that Ajaj was in violation of the conditions of probation. The court's determination was a reasonable exercise of its discretion.

3. *Ajaj Had No Sixth Amendment Right To Confrontation at the Revocation Hearing*

Relying on *Crawford v. Washington*, *supra*, 541 U.S. 36, Ajaj contends the trial court's reliance on Officer Bosch's testimony, rather than that of a representative of Thrifty Rent-A-Car, to establish ownership of the vehicle he was driving violated his Sixth Amendment right to confrontation. However, as Ajaj acknowledges, *Crawford*, which generally prohibits testimonial hearsay in criminal prosecutions unless the defendant had a prior opportunity to cross-examine the declarant, is inapplicable to probation revocation proceedings. (*People v. Johnson* (2004) 121 Cal.App.4th 1409, 1411; see also *People v. Stamphill* (2009) 170 Cal.App.4th 61, 72 [revocation of

probation is not part of a criminal prosecution, and the full panoply of rights due in a criminal trial does not apply]; *People v. Shepherd* (2007) 151 Cal.App.4th 1193, 1199, fn. 2.)

To be sure, hearsay evidence was admitted at the probation revocation hearing. The report of the stolen car was obtained from the California Law Enforcement Telecommunication System (CLETS). However, such documentary evidence, which contains sufficient indicia of its reliability, is properly admitted at a revocation hearing under Evidence Code section 1280's public records exception to the hearsay rule (see, e.g., *People v. Morris* (2008) 166 Cal.App.4th 363, 367), notwithstanding a probationer's general due process right to confrontation and cross-examination. (See *People v. Arreola* (1994) 7 Cal.4th 1144, 1156-1157; *People v. Abrams* (2007) 158 Cal.App.4th 396, 401-402.) Moreover, all the elements of the probation violation were established by Ajaj's own statements to Officer Yap during his post-arrest interview, which Ajaj concedes were admissible. Even without that concession, admission of this evidence was well within the trial court's discretion in this case. (See *Abrams*, at p. 400 [appellate court reviews admission of hearsay evidence at probation violation hearing for abuse of discretion].)

DISPOSITION

The order revoking Ajaj's probation and imposing a five year prison sentence is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.